

GAHC040008322023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Crl.Petn./111/2023

1. Smti Rimi Tayang,
D/o-Shri Sanamso Tayang
R/o- Duraliang Village,
P.O/P.S.-Tezu, Lohit District,
Arunachal Pradesh.

2. Shri Phassang Bhai,
S/o-Phassang Keru,
R/o- Banderdewa,
P.O./P.S- Banderdewa,
Papumpare District, A.P.

...PETITIONERS

-VERSUS-

1. **The State of Arunachal Pradesh**

....RESPONDENT

Advocates for the petitioner : Mr. A. Tatak, Adv.

Advocates for the respondents : Ms. L. Hage, Addl.P.P.

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 10.08.2023

Date of Judgment & Order : 29.09.2023

JUDGMENT & ORDER (CAV)

Heard Mr. A. Tatak, learned counsel for the petitioners. Also heard Ms. L. Hage, learned Additional Public Prosecutor representing the State respondent.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing and setting aside the G.R. Case No.80/23 corresponding to Changlang P.S. Case/FIR No.09/2023 dated 23.05.2023, registered under Sections 376/493/323/506 of the Indian Penal Code.

3. Mr. A. Tatak, learned counsel for the petitioners have submitted that the FIR was lodged by the petitioner No.1/victim alleging *inter alia* that the petitioner No.2/accused had abused, threatened and raped her on false promise of marriage. The actual fact of this case is that, both the petitioner Nos. 1 & 2 were in love relationship, but, the parents' of the petitioner No.1 were against the said relationship and pressurize her to withdraw herself from the said relationship. Due to constant pressure, the petitioner No.1/victim got influenced by her parents' and accordingly, she lodged an FIR against the petitioner No.2.

However, after lodging of the FIR, she realized that the petitioner No.2 did no wrong with her and he is totally innocent. Thus, the FIR was lodged only due to some misunderstanding between the parties.

4. It is submitted that both the petitioners have amicably settled their differences and entered into Mutual Agreement dated 19.06.2023, which was executed before the Executive Magistrate, Yupia, Arunachal Pradesh. He also submitted that the petitioner No.1 is not willing to proceed with the case further and even if, the proceeding is continued, there is remote chance of conviction. However, it is submitted that the case is yet to be charge-sheeted, and as such the case is non-compoundable in nature, the learned Trial Court is also not in a position to compound the case in terms of Section 320 of Cr.P.C.

5. In pursuant to the mutual settlement between the parties, the petitioner No.1 is not interested to proceed with the case and they have jointly filed this petition for quashing and setting aside the entire proceeding of the G.R. Case No.80/23 corresponding to Changlang P.S. Case/FIR No.09/2023 dated 23.05.2023, registered under Sections 376/493/323/506 of IPC by invoking the extra ordinary, discretionary and inherent power under Section 482 of Cr.P.C.

6. The learned counsel for the petitioner further submitted that there are catena of Judgments, wherein, the Hon'ble Apex Court and the Hon'ble High Court has expressed the view that in cases, which is private or personal in nature and where the parties have resolved their entire dispute, the power under Section 482 of Cr.P.C can be invoked for setting aside and quashing such criminal proceeding.

7. He further submitted that though the case has been registered under Section 376, it is a fact that both the parties were in love relationship for considerable period and only due to misunderstanding and due to pressure by the parents' of the petitioner No.1, she lodged the FIR against the petitioner No.1.

8. In support of his argument, the learned counsel for the petitioners relies on the decision passed by the Hon'ble Apex Court in the Case of ***Shivashankar @ Shiva vs. State of Karnataka & Anr., reported in Criminal Appeal No.504 of 2018***, wherein, it has been expressed that "*it is difficult to hold sexual intercourse between the parties which has continued for a considerable period, as rape*".

9. He also relies on another decision rendered by the Hon'ble Supreme Court in the Case of ***Kapil Gupta Vs State of NCT of Delhi reported in 2022 (0) Supreme SC 1108***, wherein, he stressed in paragraph 12 of the said judgment, which read as under:-

Para-12. No doubt that the learned ASG is right in relying on various judgments of this Court which reiterate the legal position that in heinous and serious offences like murder or rape, the Court should not quash the proceedings. It will be relevant to refer to paragraph 29.5 to 29.7 of the judgment of this Court in the case of Narender Singh versus State of Punjab, which read thus:

"29.5 While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6 Offences under [Section 307](#) IPC would fall in the category of heinous and serious 1 (2014) 6 SCC 466 offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or

the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of [Section 307](#) IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under [Section 307](#) IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7 While deciding whether to exercise its power under [Section 482](#) of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under [Section 482](#) of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come a conclusion as to whether the offence under [Section 307](#) IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under [Section 307](#) IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

10. Further, he relies on the decision passed by this Court in ***Criminal Petition No.234/2016 dated 12.07.2016 (Md. Jahirul Maulana vs. The***

State of Assam & Ors.), wherein, he stressed mainly on paragraph 8 of the said judgment, which read as under:-

“Para- 8. Law was laid down way back in the case of Madhavrao Jiwaji Rao Scindia and another -versus- Sam bhajirao Chandojirao Angre and others, reported in (AIR 1988 SC 709) that a proceeding may be quashed, if the chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue. This is because otherwise the parties and the witnesses will be dragged to Court and process of the Court will be abused for no purpose. When the parties have already entered into compromise, even if they are dragged to Court as witnesses, there is every likelihood of their turning back from the allegations and in that event, the learned Court will be left with no other alternative but to acquit the accused person. In that event, there will be unnecessary engagement of valuable judicial time and so taking a practical view of the matter, it appears to be proper to accept the reality and to put an end to the ongoing litigation.”

11. In this context, Ms. L. Hage, learned Additional Public Prosecutor has submitted that the case is still under investigation and as per progress report the statement of the witnesses has already been recorded under Section 161 of Cr.P.C. And also the Medical Report has been collected by the concerned IO. Thus, considering the progress of the investigation as well as nature of the offence, it is not a fit case where Section 482 of Cr.P.C. can be invoked for quashing the criminal proceeding. Further, she raised objection in the prayer made by the learned counsel for the petitioner.

12. After hearing the submissions made by the learned Advocates of both sides as well as considering the entire materials available in the record, it is seen that both the petitioner Nos.1 & 2 were in a love relationship and they had physical relationship for a considerable period. But, subsequently due to some dispute between the petitioners the present FIR was lodged by the petitioner No.1. However, before filing of the charge-sheet the dispute has been

settled amicably between the parties by executing a Deed of Settlement dated 19.06.2023 before the Executive Magistrate, Yupia, Arunachal Pradesh and at present they are living peacefully without any grievance with each other.

13. More so, the case is of purely private in nature where the parties have entered into a deed of settlement and hence, considering this aspect of the case as well as considering the view of the Hon'ble Supreme Court, I find that the chance of conviction of the petitioner No.2 is bleak even if the proceeding is allowed to be continued as the parties have settled their dispute amicably. Thus, there is no probability of adducing evidence against the petitioner No.2 by the petitioner No.1, even if she is examine as a witness in this case.

14. Further, the decision of the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh-vs-Laxmi Narayan***; reported in ***(2019) 5 SCC 688***, also can be relied on, wherein, it has been observed as under:-

"13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under [Section 482](#) of the Code to quash the criminal proceedings for the non-compoundable offences under [Section 320](#) of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of

compromise between the victim and the offender;

*iv) offences under [Section 307](#) IPC and the [Arms Act](#) etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under [Section 307](#) IPC and/or the [Arms Act](#) etc. which have a serious impact on the society cannot be quashed in exercise of powers under [Section 482](#) of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of [Section 307](#) IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of [Section 307](#) IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under [Section 307](#) IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (*supra*) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;*

v) while exercising the power under [Section 482](#) of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.

15. Under the above facts and circumstances of this case and also considering the view of the Hon'ble Apex Court in **Laxmi Narayan (*supra*)**, I am of the considered opinion that this is a fit case where the extra-ordinary power under Section 482 Cr.P.C. can be invoked to quash the criminal proceeding.

16. So considering submission made by the learned counsels of both sides as

well as considering the view of the decision made by the Hon'ble Apex Court in the case of ***Kapil Gupta (Supra) and Laxmi Narayan (Supra)*** as well as considering the fact that both the parties have compromised their dispute, I am of the view that is a fit case where the provision under Section 482 Cr.P.C. can be invoked.

17. In view of the foregoing discussions, the G.R. Case No.80/23 corresponding to Changlang P.S. Case/FIR No.09/2023 dated 23.05.2023, registered under Sections 376/493/323/506 of IPC, is hereby set aside and quashed.

18. In terms of the above, this Criminal Petition stands allowed and disposed of.

JUDGE

Comparing Assistant